

MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

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INTEROFFICE COMMUNICATION

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REVISED OPERATIONAL MEMO 111-11

October 14, 1998

TO: All Waste Management Division Supervisors

FROM: Jim Sygo, Chief, Waste Management Division

SUBJECT: Statutory Changes and Administrative Rule Development Under Part 111, Hazardous Waste Management, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as Amended (Act 451)

The purpose of this memo is to provide staff with a description of the statutory change and administrative rule development processes under Part 111 of Act 451. In addition, Waste Management Division (Division) staff involvement in the processes is also addressed.

**Background**

Michigan is authorized to administer the base federal Resource Conservation and Recovery Act (RCRA) hazardous waste management program (federal program). In order to maintain authorization to administer its own hazardous waste program (state program) in lieu of the federal program, the state program must be equivalent to, and at least as stringent as, the federal program. Thus, the state must work closely with the United States Environmental Protection Agency (U.S. EPA) to ensure that the state program is equivalent to, and at least as stringent as, the federal program.

The dynamic nature of the federal program requires the Division to continually modify the administrative rules promulgated pursuant to Part 111 of Act 451 and, if necessary, prepare amendments to Part 111 of Act 451. There are two basic types of federal program changes: changes derived from RCRA authority and changes mandated by the 1984 Hazardous and Solid Waste Amendments (HSWA) to RCRA. Changes based on RCRA authority are not in effect in Michigan until the state adopts such provisions. Program changes promulgated under HSWA authority are effective in Michigan immediately, regardless of whether or not they have been incorporated into the state program, with one exception. Program changes promulgated pursuant to HSWA authority which

result in less stringent program requirements do not take immediate effect in Michigan. Such changes do not take effect in Michigan until the state incorporates such revisions into the state program.

The U.S. EPA notifies the state of changes in the federal program by providing the state with checklists which describe the change, and through the Federal Register notices. The U.S. EPA groups program changes together in packages known as clusters. Each cluster contains changes made in the federal program, as noted in the Federal Register, from July 1 of one year to June 30 of the next year. In order to administer a given portion of the federal program, Michigan must first have statutory authority to do so. Thus, some of the program changes may require statutory changes followed by administrative rule changes.

Once changes in the federal program have been identified, Michigan must incorporate the changes into the state program within a specified time period. The state is given 12 months from the end date of a given cluster to incorporate administrative rule changes contained in that cluster into its program and submit an authorization revision application (ARA) to the U.S. EPA. However, if statutory changes are needed to accomplish the program changes, the state is given an additional 12 months (for a total of 24 months) to make the necessary statutory and administrative rule changes. In either situation, provisions for a six-month extension exist. Even with the six-month extension, the nature of the statutory change and rule promulgation process in Michigan is such that it is likely that the 18-month time period (or 30-month time period with statutory changes) will be exceeded. When this happens, Michigan must apply for an adjustment of its authorization activities schedule from the U.S. EPA. This may be done through a negotiated schedule of compliance which is published in the Federal Register.

Federally required changes are not the only source of state program changes. The general public, regulated community, special interest groups, Legislature, and Department of Environmental Quality (Department) staff may make requests and recommendations regarding program changes. These changes are typically referred to as "state-initiated changes."

### **Statutory Changes**

As stated above, in order to administer a given portion of the federal program, the state must first have the necessary statutory authority. The Department identifies the statutory changes needed and drafts a proposed statutory changes package. After internal Department review through the Department's Legislative Liaison and the Director's Office, the Department develops a final proposed statutory changes package.

The Department then finds a representative or senator to sponsor a bill containing the proposed statutory changes. The package is then sent to the Legislative Service Bureau (LSB). An attorney from the LSB uses the Department's package to draft a bill for the legislative sponsor. The Department and the LSB then review the bill, and a final version is drafted. The final version of the bill is sent to the sponsor for introduction into either the House or the Senate, depending on the sponsor's affiliation. The bill is assigned to a committee, reviewed, referred to the full branch of the Legislature, and passed (the bill may also die in a committee, which would mean that the Department must make another attempt at a new bill or choose not to apply for authorization for a particular portion of the federal program). It is then introduced in the other branch of the Legislature, assigned to a committee, reviewed, referred to the full branch of the Legislature, and passed. Once it has passed in both of the branches of the Legislature, it is sent to the Governor for signature. The Governor has veto power and may choose not to sign the bill into law.

#### **Administrative Rules**

The administrative rule development process has many steps. First, the Division identifies the administrative rule changes needed and prepares a Request for Rulemaking (RFR) for submittal to the Office of Regulatory Reform (ORR) via the Department's Regulatory Reform Officer. Once the RFR is approved by the ORR, the proposed changes are drafted and compiled into a proposed rules package. In addition, the Division prepares a report on the proposed changes. The report outlines the promulgation process, the changes, the rationale for the changes, and the impact of the changes. The rules package and rules report are then sent to Division management and designated primary staff experts for review. The positions which have been designated as primary staff experts and the individuals currently occupying those positions are as follows:

<u>Position</u>	<u>Section</u>	<u>Expertise</u>
Waste Characterization Specialist (Jack Schinderle)	Hazardous Waste Program (HWP)	Waste characterization
RCRA Committee Members	District Offices	Generator and transporter requirements
Chief, Technical Support Unit (De Montgomery)	HWP	Hydrogeological and environmental monitoring requirements

Chief, HWP Section (Ken Burda)	HWP	Permitting, licensing, closure, and corrective action requirements
Financial Expert (Steve Sliver)	HWP	Financial responsibility
Chief, Enforcement Program Section (JoAnn Merrick)	Enforcement Program	Compliance and enforcement issues
HWP Specialist (Ronda L. Blayer)	HWP	Overall rule requirements

In conducting their reviews, the primary staff experts will solicit input from other staff as appropriate. Other staff experts will be designated on a case-by-case basis, depending on the nature of the proposed changes. All staff experts are required to sign off on their area of expertise for a given rules package.

Based on the comments received from the internal review process, the rules package is revised as necessary. This may necessitate holding meetings with some staff experts to discuss and resolve any outstanding issues.

The revised rules package is then sent out to the Hazardous Waste Management Program Short List (Short List), Division staff, and the U.S. EPA for review and comment. The Short List consists of select legislators, environmental groups, industry representatives, law firms, and trade associations. Based on the comments received from the Short List distribution process, the rules package is revised. This may necessitate holding meetings with some staff experts and certain interested parties to discuss and resolve any outstanding issues.

The Department then submits the rules package to the LSB and the ORR for informal review and approval. The LSB and ORR review the package to make sure that the proposed rules are in the proper format for codification into Michigan Law and are consistent with the statutory authority under which they are proposed, respectively. At this point in the process, the Department also submits the notice of public hearing, and if required, a Small Business Economic Impact Statement (SBEIS), to the LSB for publication in the Michigan Register. Copies of these documents along with a Regulatory Impact Statement (RIS) are also submitted to the ORR. Simultaneously with the submittals to the LSB and

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ORR, a notice of the public hearing, the public comment period, and the availability of the rules package for review and comment is sent to individuals on the Hazardous Waste Management Program Long List (Long List) and placed in the Department Calendar. The Long List is composed of approximately 400 individuals who have expressed an interest in receiving information on the Part 111 of Act 451 rules. Division staff and the U.S. EPA are also provided an opportunity to comment on the rules package.

The Department then holds the necessary number of public hearings given the nature of the proposed changes. Based on comments received during the formal public comment period and those from Division staff and the U.S. EPA, the Department modifies the rules package and report as appropriate, resubmits the information to ORR if necessary, and notifies the persons who provided comment of any changes made in conjunction with the formal comment period. This may necessitate holding meetings with some staff experts and certain interested parties to discuss and resolve any outstanding issues and the preparation of a Responsiveness Summary, if appropriate. When the outstanding issues are resolved, the rules package is submitted to the LSB for formal certification. The LSB certifies the rules package and sends it to the ORR for approval regarding legality.

The ORR certifies the package and notifies the Department of its approval. The Department then prepares the required informational package for the Joint Committee on Administrative Rules (JCAR) and submits it to the ORR, who, in turn, transmits the package to the JCAR. The JCAR informational package includes the rules, the report, an SBEIS, a RIS, and any additional information that may be necessary. Within 18 days of the JCAR submittal, the Department formally adopts the rules and provides the adoption certificates to the ORR. The JCAR has 45 days from the date of receipt of the informational package to consider the rules. After this time, ORR, on behalf of the Department, may file the rules with the Office of the Great Seal (OGS). The JCAR may or may not hold a hearing within this time period. The rules become effective 15 days after the OGS filing date.

Once a set of rule revisions has been filed with OGS, a compiled version of the Part 111 of Act 451 administrative rules incorporating the approved changes is prepared. Notices of the availability of the new rules and associated rules report are then provided to the Long List, Hazardous Waste Management Program Staff, the U.S. EPA, and Division Chiefs. Notices are also provided to the general public via the Department Calendar and the Division's webpage.

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### **Authorization**

For Michigan to maintain its authorization to administer the state program in lieu of the federal program, the Department must apply for authorization from the U.S. EPA. This requires the submittal of an ARA to the U.S. EPA.

An ARA has several components. The ARA contains a general description of the program revisions for which the Department is seeking authority, a copy of Part 111 of Act 451, a copy of the applicable rules, copies of the appropriate RCRA revision checklists, an Attorney General's statement which gives the legal citations for the hazardous waste program, a permit/operating license strategy, a compliance monitoring and enforcement strategy, and a memorandum of agreement.

A draft ARA is typically submitted to the U.S. EPA for review shortly after the rules become effective. Upon receipt of the U.S. EPA's review comments, the draft ARA is revised, as necessary, and a final ARA is submitted to the U.S. EPA. Once the U.S. EPA has approved the ARA, the U.S. EPA publishes a notice of authorization in the Federal Register and various newspapers in Michigan, stating that the authorization will be automatically initiated unless public comment warrants a review of the authorization.

It is important to note that once Michigan passes a new law or promulgates a new rule, both the federal version of that law or regulation and the state's equivalent or more stringent version of the law or rule are in effect until such time that authorization is granted by the U.S. EPA. However, once the state law or rule is in place, the state can enforce the law or rule regardless of the subject authorization status. The U.S. EPA continues to enforce federal law and regulations prior to Michigan receiving final authorization. If the U.S. EPA wishes to pursue enforcement of provisions of the federal program for which Michigan is authorized, the U.S. EPA would use state law and rules to enforce such provisions.

### **Staff Involvement**

Given the scope of Part 111 of Act 451 and the administrative rules promulgated pursuant thereto, it is important that all staff have an opportunity for input into the statutory change and administrative rule development processes. In an effort to ensure that staff effectively participate in these processes, the follow procedures are being established.

Staff are encouraged to submit suggestions regarding statutory or administrative rule changes at any time. The suggestion must note the portion of the statute or rule affected, the current language in the statute or rule, the rationale for the suggested change, and the proposed statute or rule change. An example of a

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rule change suggestion is enclosed for your use. To efficiently process the suggestions, ensure that the suggestions have staff support, and ensure that duplicate or conflicting suggestions are not submitted, District staff should direct their suggested changes to the RCRA Committee member responsible for maintaining the minutes for each RCRA Committee meeting (currently rotates among District staff), and central office staff should direct their suggested changes to the Hazardous Waste Program Specialist (Ronda L. Blayer). The individuals in these positions will maintain logs of the suggested changes, coordinate the suggested changes, and follow up with the submitters as necessary.


Staff will be notified when new program changes are being drafted and reminded to submit any suggestions they may have at that time. Due to the time constraints imposed by the U.S. EPA, the rules development process will have very specific deadlines for submitting proposed rule changes and commenting on the rules package. **If staff do not get their suggestions or comments in on time, they may not be considered.** These suggestions, however, will be logged in and included for consideration in the next rules package. It is important to remember that the rule development process is long. It is conceivable that staff will not see their suggestions in a rules package for an extended period of time (e.g., 1 1/2 years).

In addition to this Operational Memo, staff are referred to the following documents: the Department's Policy and Procedures on Administrative Rule Promulgation (April 18, 1997), ORR's Information Guide (September 1996), the Joint Committee on Administrative Rules, Processing of Proposed Guidelines and Administrative Rules document (September 1991), and Michigan's Administrative Procedures Act, 1969 PA 306, as amended.

Questions regarding this Operational Memo should be directed to Ms. Blayer of the Division's Hazardous Waste Program Section, at 517-373-9548.

Enclosure

cc/enc: Hazardous Waste Program Section Staff  
Primary Staff Experts

A handwritten signature in black ink, appearing to read "Jim [unclear]", is written over the distribution list.